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To:	Secretary Bryant VanBrakle	**From:**	John Hein, Sr. V/P & General Manager
Fax:	202-523-0014	**Pages:**	4
Phone:		**Date:**	6/12/03
Re:	Corrected Letter	**CC:**	

☐ **Urgent** ☒ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

- **Comments**

I have previously submitted a letter to you regarding the "NPRM" and see that the first line of page two of that letter was omitted. I would like to have my letter amended to include this line. The full letter is attached.

Regards,

John Hein

John Hein

Senior V/P & General Manager

AMERICAN WEST STEAMBOAT COMPANY

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May 20, 2003

Bryant L. VanBrakle, Secretary
Federal Maritime Commission
Room 1046
800 North Capitol Street, NW
Washington, D.C. 20573-0001

Re: Passenger Vessel Financial Responsibility Requirements [FMC Docket No. 02-15]

Dear Mr. VanBrakle:

American West Steamboat Company, LLC ("AWSC") would like to take this opportunity to comment on the Notice of Proposed Rulemaking ("NPRM") issued by the Federal Maritime Commission (the "Commission") regarding changes to the regulations governing the Passenger Vessel Financial Responsibility Requirements. 67 Fed. Reg. 66,352 (October 31, 2002). AWSC currently operates the QUEEN OF THE WEST, a sternwheeler vessel, on seven-night cruises on the Columbia, Snake and Willamette Rivers. AWSC has a second vessel, EMPRESS OF THE NORTH, under construction, which it plans to operate in the Pacific Northwest and Alaska beginning in August 2003. AWSC uses an escrow account to meet the Commission's financial responsibility requirements.

AWSC generally supports the changes proposed by the Commission in the NPRM. AWSC is concerned that consumer confidence in the cruise industry has been shaken by the recent bankruptcies in which passengers have lost their money, and AWSC believes that changes to the regulations are needed to bolster the public's confidence.

AWSC appreciates the Commission's attempt to mitigate the impact of these proposed changes on the cruise lines. AWSC believes that the best way for the Commission to mitigate the impact of the proposed rule changes is to eliminate the additional 10% "surcharge" from the UPR coverage requirements. This additional 10% is especially burdensome on a passenger vessel operator ("PVO") that uses an escrow account to meet its obligations ***since the surcharge is revenue that is lost to the PVO forever, and even a PVO with an excellent financial and operating history has no way of recouping this money***. The surcharge is also onerous to those operators that use a third-party guarantee or a bond since they must pay higher premiums to purchase the additional coverage. Therefore, AWSC proposes that the Commission eliminate the

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10% surcharge for those operators with a proven track record of satisfactory performance for more than 24 months. AWSC believes that elimination of the surcharge, in conjunction with a revision to the current $15 million cap on UPR (as discussed below), would still provide the consumer with the increased protection that the Commission is looking to provide.

Although AWSC supports revising the $15 million cap on unearned passenger revenue ("UPR"), we believe that any changes should be tied to a PVO's berth capacity. Given the various sizes of the cruise line companies serving the United States, a "one size fits all" cap does not seem appropriate. The current cap is more than sufficient to cover the UPR of AWSC, but is not sufficient to cover the UPR of the larger cruise lines. Although AWSC would support raising the cap for larger cruise lines, we are concerned that imposing a cap equal to 100% of UPR would be overly burdensome, especially when many passengers can recover their deposits directly from their credit card companies. AWSC suggests that the Commission adopt a scale for the cap based on the berth capacity of each PVO. While such scale would provide caps on UPR that are significantly more than the current cap, AWSC does not feel that such new caps do not necessarily need to equal 100% of UPR.

With respect to credit card payments, AWSC notes that some credit card companies are now requiring cruise lines to put up additional deposits up to 100% of UPR with the credit card companies so that they can recover amounts paid to passengers in the event of a default by a PVO. This policy means that some operators now must maintain coverage up to 210% of their UPR. The credit card companies claim that they need to do this since they have no right to recover from a PVO's escrow account, insurance or bond. AWSC believes that the Commission can address this issue by permitting credit card companies to recover from a PVO's escrow account, insurance or bond only if (i) the credit card company has satisfied the claim of the passenger, and (ii) all of the individual passengers, who did not use a credit card or are ineligible to seek reimbursement from their credit card companies, have been paid.

Finally, AWSC is concerned that the Commission's proposal to allow cruise lines to reduce their UPR by excluding "excepted passenger revenue" ("EPR") is flawed. Such proposal may not provide that much of a benefit to a PVO since a significant amount of its credit card payments are usually received outside the proposed 60-day window. AWSC notes that many cruise lines, including AWSC, require that larger groups make their final payment more than 60 days before the departure date, so none of those payments could be included in EPR. Although a PVO could address this issue by changing its payment schedule, it would result in additional financial risk to the PVO because it would have less time to rebook the space in the event of a cancellation.